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In re Application of :
ALLAIRE et al. :
Application No.: 09/673,922 : DECISION ON REQUEST
PCT No.: PCT/US99/08870 :
Int. Filing Date: 22 April 1999 :
Priority Date: 22 April 1998 :
Attorney Docket No.: 39573.830003 :
For: HYBRID MAGNETICALLY :
SUSPENDED AND ROTATED :
CENTRIFUGAL PUMPING APPARATUS :
AND METHOD :

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.48(a)" and "Petition Under 37 CFR 1.47(a)" filed 21 August 2001 and "Supplemental Response to the Decision to Request" filed 24 August 2001.

BACKGROUND

On 22 April 1999, applicants filed international application No. PCT/US99/08870 which claimed a priority date of 22 April 1998 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 October 1999. The international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar, Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. A Demand for international preliminary examination was filed prior to 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 22 October 2000.

On 20 October 2000, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and an oath and declaration.

On 08 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration filed 20 October 2000 was defective because inventors Jeffrey Decker and Michael Baloh names and signatures were missing from the declaration. Additionally, the declaration was executed by M. Mary Sinnot, who has not been named in the international application. The

notification set a one month time limit in which to respond.

On 08 December 2000, applicants filed "Petition to Correct Inventorship under 37 CFR 1.48(a)," "Petition Under 37 CFR 1.183 for Waiver of Assignee Consent"; and "Petition Under 37 CFR 1.183 for Waiver of a New Oath." In a decision dated 21 February 2001, applicants' petitions were dismissed without prejudice.

On 21 August 2001, applicant filed "Renewed Petition Under 37 CFR 1.48(a)" and "Petition Under 37 CFR 1.47(a)."

On 24 August 2001, applicant filed "Supplemental Response to the Decision to Request" which included an executed declaration of non-signing inventor, Michael Baloh.

DISCUSSION

A. Submission Under 37 CFR 1.497(d)

In the instant case, the international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar; Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. In a decision dated 21 February 2001, applicants request to delete Michael Baloh and Jeffrey Decker as inventors and add M. Mary Sinnot as an inventor was dismissed without prejudice. In response to the Decision, Mary Sinnot has declared that, "I am not a co-inventor of the subject matter claimed in application no. 09/673,922. Additionally, applicants filed declarations by Michael Baloh and Jeffrey Decker which state, "I am a co-inventor of the subject matter claimed in application no. 09/673,922." However, the declarations by Michael Baloh and Jeffrey Decker also state that, "[t]hrough error, which error was made under a condition of time-urgency, and without deceptive intent, I was named as an inventor on United States Patent Application 09/673,922, but did not submit a corresponding declaration." Due to the contradiction in the above statements, it is unclear whether Michael Baloh and Jeffrey Decker are inventors of the above-identified application and further clarification is needed from Michael Baloh and Jeffrey Decker. Therefore, applicants' request under 37 CFR 1.497(d) is dismissed.

B. Petition Under 37 CFR 1.47(a)

The petition for status under 37 CFR 1.47(a) filed 21 August 2001 is moot since the declaration filed 24 August 2001 was executed by the named inventor, the previous non-signing inventor, Michael Baloh.

CONCLUSION

For the reasons discussed above, applicants' request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

For the reasons discussed above, applicants' request under 37 CFR 1.47 is **DISMISSED** as **MOOT**.

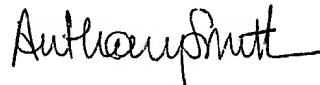
A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

A proper response must include a statement from inventors Baloh and Decker which clarifies their earlier contradictory statements and clearly sets forth their status in the present application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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